IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10065 of 2002

and

CIVIL APPLICATION No 8501 of 2002

and

MISC. CIVIL APPLICATION No 1707 of 2002

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

YAVAHARKHAN MOHABBATKHAN PATHAN

Versus

AGRICULTURAL PRODUCE MARKET COMMITTEE

Appearance:

1. Special Civil Application No. 10065 of 2002

MR UI VYAS for Petitioner

MR KH BAXI for Respondent No. 1

MR HM PRACHCHHAK A.G.P. for Respondent No. 2

DS AFF.NOT FILED (R) for Respondent No. 3-8,10-13

RULE UNSERVED for Respondent No. 9
MR GM JOSHI for Respondent No. 14

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 09/10/2003

ORAL JUDGEMENT

Heard the learned advocates.

2. The petitioner in above writ petition claims right to appointment in either of the respondents nos.1 or 14 i.e. Agricultural Produce Market Committee, Dholka (hereinafter referred to as "the Market Committee, Dholka") and Agricultural Produce Market Committee, Bavla (hereinafter referred to as "the Market Committee, Bavla") respectively. The petitioner also challenges the appointment of the respondents nos.3 to 13, in Market Committee, Dholka. According to the petitioner, the said appointments are vitiated on account of favouritism and nepotism and that the said appointments have not been made in accordance with the rule of procedure.

3. It is the claim of the petitioner that the petitioner was appointed as a driver-cum-watchman in the Market Committee, Bavla on 28th May, 1998; that his service was terminated sometime in the year 1999, since then the then existing Market Committee, Bavla was bifurcated and the Market Committee, Dholka was constituted. The respondents nos.3 to 13 were also employees of the then Market Committee, Bavla. Their services were also terminated in the year 1999. However, they being relatives of the Chairman and other members of the Market Committee, Dholka, they have been employed by the Market Committee, Dholka, whereas the petitioner has been left out.

4. On perusal of the record, it appears that under order dated 28th May, 1999, the petitioner was temporarily appointed as driver-cum-watchman by the then Market Committee, Bavla. It further transpires that before termination of his service, the petitioner had served for around two months. The petitioner did not challenge the termination of his service. It further appears that some other daily wage employees of the then Market Committee, Bavla, including the present respondents nos.3 to 13 had preferred Special Civil Applications nos.4745, 4749, 4751, 4754 and 7063 of 1999 in respect of termination of their service. Pending

those petitions, the then Market Committee, Bavla was bifurcated and the Market Committee, Dholka was constituted under Government Notification dated 29th June, 2000. On formation of the Market Committee, Dholka, the Market Committee, Dholka was also impleaded in the above referred writ petitions. The Market Committee, Dholka under its Resolution dated 10th October, 2000 resolved to absorb some 20 of the said writ petitioners in its service in various capacities. In course of the proceedings, the Market Committee, Dholka also resolved to absorb remaining 6 petitioners of the said writ petitions. Thus, all the writ petitioners in the said group of writ petitions were appointed by the Market Committee, Dholka. The said appointments have also been approved by the Director, Agricultural Produce and Rural Finance, under its communication dated 5th November, 2001, on conditions, inter alia, that no further appointment shall be made by the Market Committee, Dholka for the next three years and no appointment shall be made without the previous sanction by the said authority.

5. Though it is not denied that the respondents nos.3 to 13 are the relatives of the Chairman and the members of the Market Committee, Dholka, it appears that those respondents were earlier appointed by the then Market Committee, Bavla. They were also the writ petitioners in above referred writ petitions. Since the Market Committee, Dholka was newly constituted and was in need of experienced staff, it had resolved to absorb the said writ petitioners in its service. The said appointments were also approved by the Director, Agricultural Produce and Rural Finance. Challenge to the said appointment at this belated stage on the ground of favouritism and nepotism is not sustainable. It has also come on record that even the petitioner was appointed by the then Market Committee, Bavla being relative of one of the members of the said Committee one Mr.Mohmadkhan Nathakhan Pathan.

6. Be that as it may. Since the petitioner did not challenge the termination of his service, the same has become final. The petitioner cannot claim appointment in either of the Market Committees as of right.

In above view of the matter, the petition is dismissed. Rule is discharged. The parties shall bear their own costs.

Civil Application no.8501 of 2002 and Misc. Civil Application no.1707 of 2002 shall stand disposed

of. Interim relief if any, shall stand vacated.

[Miss R.M. Doshit, J.]

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